



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0742]

RIN 1625-AA00

Safety Zone; Upper Mississippi River, Mile Markers 751.2 to 751.8, Alma, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of the Upper Mississippi River. The safety zone is necessary to protect persons, vessels, and the marine environment from potential hazards created by a demolition project taking place on the bank of the Upper Mississippi River near Alma, WI. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

DATES: This rule is effective from September 28, 2018, through October 15, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0742 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Christian Barger, Waterways Management

Division, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314-269-2560,
email Christian.J.Barger@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Upper Mississippi River
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. It is impracticable because we must establish this safety zone by September 28, 2018, and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. The NPRM process would delay the establishment of the safety zone and compromise public safety.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential

hazards associated with the equipment to be used in the demolition of a 700 foot tall chimney at the Dairyland Power Cooperative Station will be a safety concern for anyone on a six-tenths of a mile stretch of the Upper Mississippi River at the time the chimney is toppled. This rule is needed to protect persons, vessels, and the marine environment in the navigable waters within the safety zone before, during, and after the demolition.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from September 28, 2018 through October 15, 2018. The safety zone will cover all navigable waters of the Upper Mississippi River between mile markers 751.2 and 751.8, adjacent to the eastern river bank, where the demolition of a 700-foot chimney will take place. The Coast Guard was informed that the demolition itself would take approximately 30 minutes on one day and that all debris should be contained and is not expected to enter the waterway. The period of enforcement of this safety zone will be two hours before, thirty minutes during, and thirty minutes after the demolition. The COTP or a designated representative will inform the public through Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNM), and/or Marine Safety Information Bulletins (MSIBs), or through other means of public notice, as appropriate, at least 3 hours in advance of the enforcement period. The duration of the zone is intended to protect persons, vessels, and the marine environment on these navigable waters during the chimney demolition.

No vessel or person will be permitted to enter the temporary safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to Sector Upper Mississippi River, U.S. Coast Guard. A designated

representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign “PATCOM”. Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or by telephone at 314-269-2332. All persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative. The COTP or a designated representative will inform the public of the enforcement times and dates for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Safety Information Marine Broadcasts (SIMBs), as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 13563 (“Improving Regulation and Regulatory Review”) and 12866 (“Regulatory Planning and Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order

13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone impacts less than a one-mile stretch of the Upper Mississippi River for approximately three hours on one day. Moreover, the Coast Guard will issue a Safety Marine Information Broadcast (SMIB) via VHF-FM marine channel 16 about the zone and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic

impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not

individually or cumulatively have a significant effect on the human environment. This rule involves safety zone that impacts a less than a one-mile stretch of the Upper Mississippi River for approximately three hours on one day. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; and Department of Homeland Security Delegation No.0170.1.

2. Add § 165.T08-0724 to read as follows:

§ 165. T08-0742 Safety Zone; Mile Markers 751.2 to 751.8, Upper

Mississippi River, Alma, WI.

(a) Location. The following area is a safety zone: all navigable waters of the Mississippi River between mile marker (MM) 751.2 and MM 751.8, Alma, WI.

(b) Effective period. This section will be enforced from September 28, 2018 through October 15, 2018.

(c) Enforcement period. This section will be enforced for three hours on one day, two hours prior to, thirty minutes during, and thirty minutes after the completion of demolition at the Dairyland Power Cooperative Station in Alma, WI. The Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative will inform the public of the enforcement through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs) and/or Safety Marine Information Broadcasts (SMIBs) or other means of public notice at least three hours in advance of the enforcement of this safety zone.

(d) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, persons and vessels are prohibited from entering the safety zone unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Upper Mississippi River. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM".

(2) Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be

contacted on VHF-FM channel 16 or by telephone at 314-269-2332.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(e) Informational broadcasts. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs) and/or Safety Marine Information Broadcasts (SMIBs) or other means of public notice of the enforcement period for the temporary safety zone as well as any changes in the dates and times of enforcement.

Dated: August 21, 2018

STORMER, SCOTT A.,
Captain, U.S. Coast Guard,
Captain of the Port Sector Upper Mississippi River.
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